

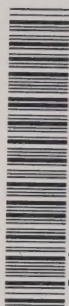
CA20N  
TR 186  
-78B10

Government  
Publications

MINISTRY OF TREASURY, ECONOMICS  
AND INTERGOVERNMENTAL AFFAIRS

LOCAL GOVERNMENT DIVISION

BULLETIN NO.: 10



3 1761 12062314 5

LABOUR RELATIONS -  
THE ORGANIZING PROCESS

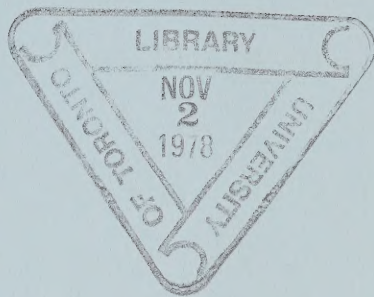
THE HONOURABLE W. DARCY McKEOUGH

TREASURER OF ONTARIO AND  
MINISTER OF ECONOMICS AND  
INTERGOVERNMENTAL AFFAIRS

RENDALL DICK, Q.C.


DEPUTY TREASURER OF ONTARIO AND  
DEPUTY MINISTER OF ECONOMICS  
AND INTERGOVERNMENTAL AFFAIRS

JUNE 1978



## TABLE OF CONTENTS

	<u>PAGE</u>
Introduction.....	1
The Organizing Campaign.....	2
How A Union Obtains Bargaining Rights.....	2
Who Can Belong To A Union?.....	4
The Rights and Responsibilities of the Employer.....	4
The Rights and Responsibilities of the Unions.....	6
The Role of The Ontario Labour Relations Board In the Organizing Process.....	8
Summary.....	9



Digitized by the Internet Archive  
in 2024 with funding from  
University of Toronto

<https://archive.org/details/31761120623145>

## Introduction

This bulletin, one of a series produced by the Local Government Division, Ministry of Treasury, Economics and Intergovernmental Affairs, discusses the legalities involved when a group of employees takes action to organize into a union.

The subject will be of interest to all municipal-government organizations, particularly to those whose staff are not represented by unions.

Labour relations is a broad topic and a great many texts, articles, papers and periodicals have been written about it. It is beyond the scope of this bulletin to address the entire subject. The purpose here is to present a basic outline of one aspect of labour relations in a manner that, it is hoped, will create an awareness of the subject and encourage further enquiry by those who want to know more. The bulletin is an attempt to foster good relations between labour and management, with or without the presence of a union.

Further bulletins will discuss other areas under the general heading of labour relations.

## The Organizing Campaign

The initiative to organize employees into a union may come from the employees themselves, from a union already representing some of the employees of a municipality (e.g. an outside-workers union organizing the inside workers) or from a union representing workers elsewhere, perhaps in a local industry or a neighbouring municipality. In most cases, this initiative comes from one of the latter two sources. In other cases, the employees themselves may form an independent group and apply for certification as a trade union. There are certain things the group must do, such as hold a meeting and approve a constitution, and the Ontario Labour Relations Board makes the decision as to whether the employee group qualifies as a trade union.

Management frequently learns of an organizing campaign only after it has begun, and sometimes reacts emotionally and defensively. Supervisors, managers and members of councils alike should avoid such reaction, and particularly refrain from making promises or threats; the law does provide employees with the right to organize.

During a campaign, managers and councillors are restricted in what they can and cannot say and do regarding the organizing drive. For example, in accordance with the Labour Relations Act, council should not grant increases in pay or in fringe benefits while organizing is going on, as this can be interpreted as interference with the union drive.

## How A Union Obtains Bargaining Rights

There are four methods by which a union can obtain the right to represent employees and bargain with their employers.

The first method is by voluntary recognition of the union by the employer. In cases where the municipality realizes that a substantial portion of its employees want the union, council may agree to deal with the union. It will do this when it feels the union would win a vote regardless of anything council or management might do, or if it feels that opposition to the union will alienate employees to the extent that there may be an adverse effect on performance and production. In other cases, council may, in fact, prefer to deal with a union that represents employees collectively,

rather than deal with employees on an individual basis. Voluntary recognition is not very common and is done by private arrangement without supervision by the Ontario Labour Relations Board.

The other three methods each involve obtaining a Certificate from the Ontario Labour Relations Board; thus the process is commonly referred to as "certification". This Certificate declares that the union is the exclusive bargaining agent for the group of employees that was organized.

During an organizing campaign, the union formally enlists members by having employees complete application cards and pay an initial membership fee. The union then issues each of these employees with a receipt that serves as a temporary membership card. The union can then apply to the Ontario Labour Relations Board for a Certificate. The Board will conduct a hearing and, if it is satisfied that the majority of employees are members (55% or more) and that everything is in order, it will certify the union as exclusive bargaining agent.

In other cases, the union might enrol a membership of less than 55%, but still feel that a majority of employees do want a union. If the union can demonstrate that 45% or more of the employees are members of the union, it may apply to the Ontario Labour Relations Board for certification. The Board may direct, following a hearing, that a vote be taken to determine whether the majority of employees do, in fact, want a union. (In certain special circumstances, the union can make application for certification where only 35% of the employees are members of the union). If the result of the vote indicates that more than half of the employees who voted want the union, the Board will certify the union as exclusive bargaining agent.

Finally, there are those rare occasions where the municipality purposely or inadvertently contravenes one or more provisions of The Labour Relations Act. In such cases, the union may make application to the Ontario Labour Relations Board. If the Board finds that the municipality's actions make it unlikely that the true wishes of the employees can be ascertained, it may certify the union as exclusive bargaining agent. (It will do so only if it is satisfied that the union does have a reasonable degree of membership support of employees).

### Who Can Belong To A Union?

In Ontario, local-government employees come under the jurisdiction of The Labour Relations Act. There are certain exceptions to this rule, notably policemen, firemen and school teachers who are governed by separate legislation. (Employees of hospitals and homes for the aged are governed by other legislation in addition to The Labour Relations Act.)

Generally speaking, all employees of municipal corporations are eligible to join a union. To quote the Act; "Every person is free to join a trade union of his own choice and to participate in its lawful activities." (The Labour Relations Act, section 3.)

Persons who are employed in a managerial capacity (for example, Town Manager) or in a confidential capacity to the labour relations function (for example, Personnel Officer) are not considered to be "employees" for purposes of this Act.

### The Rights and Responsibilities of the Employer

There are several rights, obligations and restrictions placed upon a municipality during a union organizing campaign. The following are the more important of these.

- Just as unions form national and international associations, employers are free to join employers' organizations. (The Labour Relations Act, section 4). Today, in Canada, such organizations as the Canadian Manufacturers Association and the Association of Municipalities of Ontario consider, among other things, labour relations and collective bargaining at their meetings and conventions in order to solve common problems and help members deal with unions. In fact, some of these associations actually bargain with unions on behalf of the member employers.
- The employer runs the risk of automatic certification of his employees if he does anything to contravene the Act so that the true wishes of the employees are not likely to be ascertained. (The Labour Relations Act, section 7a). If the employer does something suspicious, the Board will give the union the benefit of any doubt, keeping in mind the basic philosophy that every person is entitled to join a trade union.

- An employer may not participate in or interfere in the forming, selection or operation of a union. (The Labour Relations Act, section 56.) The reason is twofold. An employer may not participate because it could be collusion with the union at the expense of the employee. An employer may not interfere because this might deny an employee of his right to join a union.
- An employer may not discriminate against or refuse to employ a person because of his activities in helping to organize a union. An employer may not discharge or discipline an employee for such activities. An employer may not make any rule or impose any condition that might restrict an employee from joining or forming a union. An employer may not take any action which interferes with the employee's basic right to join a trade union of his choice. (The Labour Relations Act, section 58.)
- An employer may not recognize a second trade union during the time a trade union is entitled to represent his employees. (The Labour Relations Act, section 59(1).) Here again, such an action would deny employees their right to belong to a union of their choice.
- An employer may not intimidate or force an employee to join a union or refrain from joining a union. An employer may not intimidate or force an employee to refrain from exercising his rights or performing his obligations as laid down in The Labour Relations Act. (The Labour Relations Act, section 61.)
- During working hours at the place of work, an employer may not try to convince employees not to join the union. (The Labour Relations Act, section 62.) This restriction is placed on the employer because a similar restriction is placed on the union, and the intent of the Act is not to give the employer an unfair advantage.
- Where the employer has received notice from the Ontario Labour Relations Board that a trade union has applied for certification, the employer should not alter the wages, benefits or working conditions of his

employees until the application has been heard by the Board. The reason for this is to avoid situations where the loyalty of the employees is bought by an increase or the reverse, where employees are penalized for union activity by a decrease in pay or benefits. Again, the prohibition is to ensure that each employee has absolute freedom of choice.

- An employer may not dismiss, threaten, discriminate against, intimidate, coerce, penalize or refuse to employ a person because he may testify in a proceeding under this Act. (The Labour Relations Act, section 71.) The reason is to ensure that complete and honest information is given to the proceeding and that employees are not afraid to make an application or file a complaint under the Act.

The foregoing list is not intended to be all-inclusive, but is only provided to give examples of the rules that a municipality must follow. For complete information, reference should be made to The Labour Relations Act.

On reading the foregoing, it may seem that a municipality can do nothing, and has no right to present its point of view once the unionization process has begun. This is not the case.

A municipality and its management are free to make statements, both verbally and in writing, and to answer employees' questions as long as there is no contravention of any of the provisions of the Act such that the true wishes of the employees are not likely to be determined. Indeed, there are some things that the municipality should do. It is a mistake to "clam up" entirely and refuse to answer all questions that employees might have. The municipality should be ready to state its own position responsibly and honestly.

### The Rights and Responsibilities of the Unions

There are also several rights, obligations and restrictions placed on a union in an organizing drive. The following are some of the more significant of these.

- A trade union may, at any time, apply to the Ontario Labour Relations Board for certification as bargaining agent for

employees (provided no other trade union has already been certified.) (The Labour Relations Act, section 5(1).) This is in keeping with the employees' right to join a union.

- A trade union may apply to the Ontario Labour Relations Board for certification as bargaining agent for employees where the employer has contravened the provisions of the Act so that the true wishes of the employees are unlikely to be ascertained. (The Labour Relations Act, section 7a).
- A trade union may not participate in or interfere with the forming and operation of an employers' organization or contribute financial or other support. (The Labour Relations Act, section 57.) The reasons are to avoid collusion and to avoid denying the municipality the right to join an association.
- A trade union may not act in a discriminating or arbitrary manner or in bad faith in representing employees. (The Labour Relations Act, section 60.) Again, this protects the rights of the individual, in accordance with the spirit of the Act.
- A trade union may not intimidate or force an employee to join a union or refrain from joining a union. A trade union may not intimidate or force an employee to refrain from exercising rights or performing obligations as laid down in The Labour Relations Act. (The Labour Relations Act, section 61.) Here too, the right of the individual is being protected.
- A trade union may not try to convince municipal employees to join the union during working hours at the employee's place of work. (The Labour Relations Act, section 62.) This activity must take place outside the office or plant and outside working hours. This recognizes the municipality's right to carry on its business without interference or interruption.
- A trade union may not discriminate against a person, intimidate or coerce a person, or impose a penalty on a person because he may testify in a proceeding under this Act. (The Labour Relations Act, section 71(2).)

The reason is to ensure that complete and honest information is given to the proceeding and so that employees are not afraid to make an application or file a complaint under the Act.

As was the case with the employer's rights and responsibilities, the foregoing list is not intended to be all-inclusive, but is only provided to give examples of the rights of and restrictions on trade unions during organizing drives. For complete information, reference should be made to The Labour Relations Act.

### The Role of The Ontario Labour Relations Board in the Organizing Process

Unlike many of the statutes, The Labour Relations Act is not administered and enforced by the courts. The Act is administered by an independent tribunal called the Labour Relations Board. This tribunal has special experience in labour-relations matters and is composed of members representing labour and management, together with a number of neutral chairmen.

In some respects, the Board proceeds in the same way as a court. It holds hearings, witnesses give evidence under oath, and its decisions are legally binding, but proceedings are much less formal than those of a court. Parties are entitled but not required to be represented by lawyers and most cases are heard by a panel.

The Ontario Labour Relations Board performs several functions relative to the organizing process. These functions are to;

- Conduct hearings into applications by trade unions for certification as bargaining agent for employees.
- Determine the unit (or group) of employees that is appropriate for collective bargaining purposes.
- Verify the status of the applicant union to ensure it is a bona fide trade union.
- Determine the number of employees that will be in the bargaining unit.
- Direct that a representation vote be taken to determine whether the majority of employees in the bargaining unit are in favour of the trade union.

- Decide who exercises managerial functions or is employed in a confidential capacity for purposes of determining who can belong to the union.

### Summary

For the most part, unions belong to national or international associations with large, fully trained staffs. When you come up against a union representative, chances are you will not be dealing with an amateur but with a highly skilled professional. It is essential that you be equally professional and take advantage of all of your rights under the law and, at the same time, do not deny any rights to the union or your employees. Thus, at the first sign of union activity in your organization you should get immediate legal advice from your municipal solicitor or from a lawyer specializing in labour relations.

In addition, the following are devoted almost exclusively to municipal labour-relations matters and may be able to provide some assistance.

Mr. D. W. McEntee  
Co-ordinator of Labour Relations  
Association of Municipalities of  
Ontario  
Suite 902  
100 University Avenue  
Toronto, Ontario  
M5J 1V6

or

Ontario Municipal Personnel  
Association  
c/o Association of Municipalities  
of Ontario  
Suite 902  
100 University Avenue  
Toronto, Ontario  
M5J 1V6

The following publications will also be of interest.

The Labour Relations Act	\$2.00
The Labour Relations Act: Rules of Procedure, Regulations and Practice Notes	\$2.00
A Guide to The Ontario Labour Relations Act	\$0.50

Single copies of these publications are available, free of charge, from the Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1Y7. Additional copies are available for the prices shown from the Ontario Government Book Store, 880 Bay Street, Toronto, Ontario M7A 1Y7



Do you want more information on this subject? Ask any of the field officers of the Local Government Division. They are located at these addresses:

KINGSTON

1055 Princess Street  
Kingston, Ontario  
K7L 5T3  
(613) 546-5565

OSHAWA

74 Simcoe Street S.  
Oshawa, Ontario  
L1H 4G6  
(416) 571-1515

LONDON

495 Richmond Street  
London, Ontario  
N6A 5A9  
(519) 438-7255

OTTAWA

244 Rideau Street  
Ottawa, Ontario  
K1N 5Y3  
(613) 232-9446

NORTH BAY

1354 Gorman Street  
North Bay, Ontario  
P1B 2Y4  
(705) 476-4300

SUDBURY

1349 LaSalle Blvd.  
Sudbury, Ontario  
P3A 1Z2  
(705) 566-0901

ORILLIA

15B Matchedash Street  
Orillia, Ontario  
L3V 4T4  
(705) 325-6144

THUNDER BAY

435 James St. S.  
P. O. Box 5000  
Thunder Bay, Ontario  
P7C 5G6  
(807) 475-1621

Additional copies of this bulletin are available at \$0.50 per copy, prepaid, from:

Ontario Government Bookstore  
880 Bay Street  
Toronto, Ontario  
M7A 1N8

Please make cheques payable to the Treasurer of Ontario.

